

REMARKS

Claims 1-7 are pending. Claims 1 and 5 have been amended. No new subject matter has been added. Claims 6 and 7 have been found allowable.

Claims 1 and 5 stand rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite. Claim 1 has been amended by deleting the phrase “(also known as a Sorel cement)” and claim 5 has been amended to delete the phrase “or includes.” Applicant respectfully submits that the rejection is now moot and respectfully requests that the rejection be withdrawn.

Claims 1-3 stand rejected under 35 U.S.C. §103(a) as being allegedly obvious over U.S. Patent Nos. 4, 661,339 (“The Allen reference”) and 5,192,804 (“the Blum reference”) and European Patent No. 0 357 327 (“the Kent reference”).

Claim 1 of the present application is directed to a solid dosage containing a pharmaceutically active substance, that is a water soluble gaseous substance, ethyl alcohol, L-carnitine, pantothenic acid, pyruvate, or combinations thereof, incorporated into a magnesium oxychloride cement. Claims 2 and 3 are directed to where the dosage is in the form of a capsule or a tablet.

The Allen reference discloses sustained release of trace elements, but, as the Examiner has admitted in paragraph 4 of the action, does not suggest the specific substances recited in claim 1. Allen does not suggest incorporating ethyl alcohol, or any other highly hygroscopic substances, such as L-carnitine, in a cement to form a solid dosage. Nor does this reference suggest the inclusion of a water soluble pharmaceutically active gas, such as nitrous oxide, in a magnesium oxychloride cement.

The Kent reference discloses a sustained release formulation using magnesium oxysulphate (MOS) cement. Only once is magnesium oxychloride mentioned in this reference. See Kent page 4, line 64. This is clearly a typographical error, as pointed

out on amended page 3 of the present application. No where else is magnesium oxychloride cement mentioned in the reference. Nor is there any mention of the starting materials to form this cement. To one skilled in the art it is obvious, based upon the total disclosure that the reference should read “magnesium oxysulphate”, not “magnesium oxychloride.” Therefore, the applicant respectfully submits that since the Kent reference does not in fact teach using magnesium oxychloride cement in a sustained release formulation it cannot be combined with the Allen reference to obviate the present claims.

The Blum reference discloses the use of L-carnitine and compositions thereof in the feeding of pigs. The Examiner has stated that the reference discloses, at column 4, lines 34-41 and again in claim 1, that the L-carnitine is give in “a particulate form.” Applicant respectfully submits that this is incorrect. The Blum reference states:

“Conventionally, the diet is fed on an ad libitum basis in the form of pellets or ground to form a meal, depending on the age of the pig. The appropriate form of the feed is well known to those skilled in the art, as are the feeding regimens, that is, the frequency and the amount of the diet fed to the animals. Those skilled in the art may readily determine the amount of total feed at the various stages of pig development.” See Blum, Col.4, Line 34-41.

Likewise, claims 1 reads:

“A feed composition for starter pigs weighing up to 16 pounds and as young as fourteen days which comprises at least 5ppm of L-carnitine in admixture with a high nutrient density diet containing at least 30% milk products suitable for feeding to starter pigs, between 5 to 15% added fat, and at least 15% protein.”

Thus, it is not specified in what form the L-carnitine is in when it is incorporated in the feed composition. One skilled in the art reading Blum would therefore have to conclude that the L-carnitine was in it's natural state, which, due to it's hygroscopic nature, is a amorphous mass with a jelly like consistency. Thus, the L-carnitine is not a dry solid,

which is the focus of the present invention. See the present specification, page 3, line 25 through page 4, line 2. Therefore, Applicant respectfully submits that combining Blum with Allen and Kent does not render claims 1-3 unpatentable.

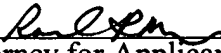
In particular, Applicant respectfully submits that even if these references are combined, the subject matter of claims 1-3 is not taught or suggested. Moreover, one skilled in the art would not combine Allen with Kent, since Kent does not teach or suggest using magnesium oxychloride cement, thus there is no reasonable expectation of success in the combination. Lastly, the object of the present invention is to prepare a dry, solid dosage containing at least one hydroscopic substance. This would not be accomplished by combining Blum, which teaches “wet” L-carnitine compositions, with either Allen and/or Kent. Therefore, applicant respectfully requests that the Examiner withdraw this rejection.

Claims 4 has been objected for depending from a rejected claims. Claim 1 has been amended to overcome the rejection under 35 U.S.C. §112, second paragraph, and Applicant does not believe that claim 1 is rendered obvious by the combination of the Allen, Kent and Blum references. Thus, it is respectfully submitted that the objection should be withdrawn.

Applicant respectfully request favorable re-consideration and allowance of the present claims.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,



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